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BEFORE THE DEPARTMENT
OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF THE APPLICATION)
FOR BENEFICIAL WATER USE PERMIT)
NO. 64600-S76H BY GARY DEAN EVANS)

FINAL ORDER

* * * * *

The time period for filing exceptions to the Hearing Examiner's Proposal for Decision in this matter has expired. Timely exceptions to the Proposal for Decision were filed by the Applicant Gary Dean Evans on May 14, 1988. Oral Arguments were held before the agency in the Hamilton, Montana on July 7, 1988.

The Department of Natural Resources and Conservation (Department or DNRC) hereby modifies the Proposal for Decision as specified herein.

Response to Exceptions Filed

Exceptions filed by Applicant, Gary Dean Evans, address both a procedural matter regarding the hearing held in this case, and the substance of the Proposal for Decision entered by the Hearing Examiner.

Procedurally, Applicant claims that the Objectors should not have been allowed to testify or present evidence because they failed to answer a discovery request. Specifically, the Applicant claims he was prejudiced at the hearing because he could not adequately prepare not knowing what the extent of the Objectors' claimed rights were and how they believed those rights would be adversely affected by the proposed use.

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The record discloses that the Applicant sent written interrogatories to the Objectors pursuant to ARM 36.12.215. However, the questions asked were very general in nature, with much of the material requested either already in the record or public information. Additionally, at oral argument, Applicant could not identify any specific testimony or evidence that he would have rebutted had he known the nature of the testimony or evidence prior to the hearing. Finally, Applicant did not raise this issue at the hearing. Applicant has not demonstrated that he was prejudiced by the Objectors' failure to answer the discovery request. Accordingly, all testimony and evidence submitted at the hearing is properly considered part of the record herein.

Substantively, Applicant excepts to the Hearing Examiner's conclusion in the Proposal for Decision that there is no unappropriated water in the source of supply when the water can be put to the beneficial use proposed by the Applicant (Conclusion of Law No. 8). The Applicant asserts that he presented substantial credible evidence that there is unappropriated water available at the proposed time of use and that it is available in the amount requested.

Proposed Conclusion of Law No. 8 states:

Water is physically available at the proposed point of diversion as required by § 85-2-311(1)(a). (See Finding of Fact 11.) However, the Applicant failed to prove that there will ever be a year when he will not be called for water because of the assertion of an objector's water rights. (See Finding of Fact 10.) Thus, it cannot be concluded that

there is unappropriated water in the source of supply when the water can be put to the use proposed by the Applicant or throughout the period when the Applicant seeks to appropriate the water. See In the Matter of the Application for Beneficial Water Use Permit No. 060622-s76G by Wayne and Kathleen Hadley, Proposal for Decision, March 31, 1988 [Hadley].

Hadley, a prior DNRC decision, concluded that there must be sufficient water "physically present at the point of diversion to supply the amount requested throughout the period of appropriation, and that, at least in some years throughout the period of appropriation, no legitimate calls for water will be made . . . by a senior appropriator". Hadley, Final Order, May 31, 1988, page 3 (emphasis added)(footnote omitted.)

The Hearing Examiner found that water not subject to call had not been available throughout the entire irrigation season during any year. Proposal for Decision, Finding of Fact No. 10. From this finding he concluded that water was unavailable for appropriation.

In review of the record herein it is clear that there are times when not enough water is available to satisfy actual demands of senior appropriators. However, the transcript of the hearing also contains testimony from senior claimants as well as the Applicant that at times water is available. For example, Ms. Lowman testified that there is typically plenty of water in the spring - sometimes too much. Each objector indicated early in the season there is usually water available. However, Mr. Roy testified that about the middle of the irrigation season (middle

of July) they are consistently short of water. Mr. Roy's testimony was supported by other senior water users.

Applicant has shown that he can make beneficial use of the water applied for early in the season. The Department has the authority to issue permits subject to terms, conditions, restrictions, and limitations it considers necessary to see that senior appropriators are not adversely affected. Section 85-2-312(1), MCA. The Department may limit the period of appropriation in issuing a permit, if necessary. In this case the evidence clearly supports that water is available for appropriation before July 15. After July 15 water above what is used by seniors (actually called) is not available. Since all available water is actually used by seniors after that date, water use under a new permit would necessarily adversely affect senior water rights. Adversely affecting senior water right is prohibited by law. Section 85-2-311(b), MCA.

The evidence also shows that the Applicant can make beneficial use of the water even if limited to a shorter period of appropriation earlier in the season. Therefore, based on a review of the complete record, the finding that water is unavailable from May 1 to July 15, is not based on competent substantial evidence and will be modified. Section 2-4-621(3), MCA. Finding of Fact No. 17 is amended to read:

17. Objectors testified that water shortages consistently occurred later in the irrigation season. Mr. Roy testified that they are generally short of water from the middle of the season on. (After the middle of July.) However, the record shows that

water in excess of seniors' needs is available earlier in the season. Ms. Lowman testified that there was water available in the spring. The Applicant also testified that there was plenty of water available at the proposed point of diversion.

Conclusions of Law Nos. 8 and 9 are amended to read:

8. Water is physically available at the proposed point of diversion as required by § 85-2-311(1)(a), MCA. See Finding of Fact No. 11. However, the Applicant must prove that there is sufficient unreserved, uncaptured water in the source of supply throughout the period of appropriation at least some years. See In the Matter of the Application for Beneficial Water Use Permit No. 60622-s76G by Wayne and Kathleen Hadley. Applicant has failed to prove that unappropriated water is available throughout the entire period when the Applicant seeks to appropriate the water. § 85-2-311, MCA.

However, the record shows that after the middle of the irrigation season water is available. Therefore, the permit may issue if it is conditioned so that the period of appropriation ends at July 15 of each year, the point where the record demonstrates water becomes unavailable. See Finding of Fact No. 17.

9. The appropriation of water under this permit, as conditioned to limit the period of appropriation, will not adversely affect water rights of a prior appropriator § 85-2-311(1)(b), MCA.

Except as modified above, all the Findings of Fact and Conclusions of law in the Proposal for Decision are incorporated in this Order by reference. Based upon the Findings and Conclusions of Law, all files and records herein, and the exceptions and oral argument hearing, the Department of Natural Resources and Conservation makes the following:

ORDER

Subject to the terms, restrictions, conditions, and limitations specified below, Application for Beneficial Water Use Permit No. 64600-S76H is hereby granted to Gary Dean Evans.

The appropriation shall be for one (1.0) cubic foot per second up to 16.52 acre-feet per year restricted to a period from May 1 to July 15, inclusive, of each year. The water shall be used for irrigation on a total of 10 acres in the S $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 10, Township 3 North, Range 21 West, Ravalli County. The source of water shall be an unnamed tributary of Bunkhouse Creek diverted by means of a ditch in the NW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 15, Township 3 North, Range 21 West, Ravalli County. The priority date of this permit is February 13, 1987 at 10:18 A.M.

This permit is issued subject to the following additional express terms, conditions, restrictions, and limitations:

A. This permit is subject to all prior and existing rights, and to any final determination of such rights as provided by Montana Law. Nothing herein shall be construed to authorize appropriations by the permittee to the detriment of any senior appropriator.

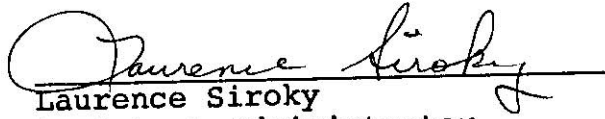
B. Issuance of this permit by the Department shall not reduce the permittee's liability for damages caused by exercise of this permit, nor does the Department, in issuing this permit, acknowledge any liability for damages caused by exercise of this permit, even if such damage is a necessary and unavoidable consequence of same.

C. This permit is granted subject to the right of the Department to modify or revoke the permit in accordance with § 85-2-314, MCA, and to enter onto the premises for investigative purposes in accordance with § 85-2-115, MCA.

D. The issuance of this permit by the Department in no way grants the permittee any easement rights or the right to enter upon the property of other persons or National Forest system lands to exercise this permit.

E. This permit is issued in conjunction with Statement of Claim No. 212610-S76H. The flow rate and volume of this permit shall be reduced by the flow rate and volume finally decreed to the claimed water right.

DATED this 24 day of January, 1989.


Laurence Siroky
Assistant Administrator
Water Resources Division
Department of Natural Resources
and Conservation
1520 East Sixth Avenue
Helena, Montana 59620

NOTICE

The Department's Final Order may be appealed in accordance with the Montana Administrative Procedure Act by filing a petition in the appropriate court within 30 days after service of the Final Order.

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing FINAL ORDER was duly served upon all parties of record at their address or addresses this 25th day of January, 1989, as follows:

Gary Dean Evans
P.O. Box 295
Darby, MT 59829

James W. Connelly
Lorraine Connelly
P.O. Box 584
Darby, MT 59829

Evelyn F. Lowman
1311 Old Darby Road
Darby, MT 59829

Tim L. & Peggy McKay
P.O. Box 556
Darby, MT 59829


Mike McLane
Missoula Field Office
P.O. Box 5004
Missoula, MT 59806

Emil J. and Lenora Skroch
P.O. Box 236
Darby, MT 59829

Lyle and Helen Barringer
P.O. Box 694
Darby, MT 59829

Kenneth W. Roy
Box 1310A Old Darby Road
Darby, MT 59829

Faye Bergan
Department of Natural
Resources & Conservation
(Interdepartmental Mail)


Irene V. LaBare
Legal Secretary

BEFORE THE DEPARTMENT
OF NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF THE APPLICATION)
FOR BENEFICIAL WATER USE PERMIT)
NO. 064600-s76H BY GARY DEAN EVANS)

PROPOSAL FOR DECISION

* * * * *

Pursuant to the Montana Water Use Act and to the contested case provisions of the Montana Administrative Procedure Act, a hearing was held in the above-entitled matter on March 8, 1988 in Hamilton, Montana.

The applicant, Gary Evans, appeared at the hearing in person.

Objectors Kenneth Roy and Evelyn Lowman appeared at the hearing in person.

Emil Skroch appeared on behalf of objectors Emil and Lenora Skroch.

Objectors James and Lorraine Connelly were represented by James Connelly.

Peggy McKay appeared on behalf of objectors Tim and Peggy McKay.

Objectors Lyle and Helen Barringer did not appear at the hearing.

John Westenberg, adjudication specialist from the Missoula Water Right Field Office, appeared as a staff expert for the Department of Natural Resources and Conservation (hereafter referred to as DNRC).

EXHIBITS

The applicant offered 17 exhibits to be entered into the record.

Applicant's Exhibits 1 and 2 are blueprints of aerial photographs of the area of diversion and use. The applicant indicated land lines, ownership, the proposed diversion system, and the proposed place of use on Exhibit 1.

Exhibit 2 was the same map copy without any added markings.

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Applicant's Exhibits 3 and 4 are copies of aerial photographs taken July 6, 1941. Exhibit 4 is a 150% enlargement of a portion of the area shown in Exhibit 3.

Applicant's Exhibit 5 is a notice of appropriation of water right filed in Ravalli County on May 21, 1956 by Alton S. Windsor, Jr.

Applicant's Exhibit 6 is a copy of the map of Township 3 North, Range 21 West from the Ravalli County Water Resources Survey.

Applicant's Exhibit 7 is a copy of two pages from the notes of the Ravalli County Water Resources Survey.

Applicant's Exhibits 8 and 9 are single page letters from Clifford Buhler and Dave House respectively. The letters discuss water use for irrigation on property near the applicant's property.

Applicant's Exhibits 10 and 11 are copies of warranty deeds (each two pages) for the land which the applicant is proposing to irrigate. The portion of each deed dealing with water rights or the conveyance of water is highlighted.

Applicant's Exhibit 12 is a copy of five pages of the material from Statement of Claim Number 76H-W-150533, including copies of both sides of the claim form. The claim was made by Carrie A. Clyde (transferred to Tim and Peggy McKay) for waste and seepage water from Tin Cup Creek.

Applicant's Exhibits 13, 14, 15, 16, and 17 are copies of letters dated December 14, 1987 written by the applicant to the objectors (listed in their respective order below) asking for a list of witnesses and a summary of the testimony to be presented at the hearing. All exhibits, except Exhibit 13,

had signed return receipt cards attached to them. Copies of letters to the following objectors were offered:

James W. and Lorraine M. Connelly
Emil J. and Lenora Skroch
Tim L. and Peggy McKay
Kenneth W. Roy
Evelyn F. Lowman

Objectors' Exhibit 1, a map of the Mill Ditch and Bunkhouse Creek conveyance system, was offered by objector James Connelly.

All exhibits were accepted for the record without objection except Applicant's Exhibits 3, 4, 13, 14, and 16. All of the objections to these exhibits were overruled during the course of the hearing.

After the applicant offered Applicant's Exhibit 9, he made a motion to hold the hearing record open to receive two additional exhibits, similar in content to Applicant's Exhibits 8 and 9. This motion was denied before the close of the hearing.

The Department file was made available at the hearing for review by all parties. No party made objection to any part of the file. Therefore, the Department file in this matter is included in the record in its entirety.

The Hearing Examiner, having reviewed the record in this matter and being fully advised in the premises, does hereby make the following proposed Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. MCA Section 85-2-302 states, in relevant part, "Except as otherwise provided in (1) through (3) of 85-2-306, a person may not appropriate water

or commence construction of diversion, impoundment, withdrawal, or distribution works therefor except by applying for and receiving a permit from the department." The exceptions to permit requirements listed in §85-2-306 do not apply in this matter.

2. Application for Beneficial Water Use Permit No. 064600-s76H was duly filed with the Department of Natural Resources and Conservation on February 15, 1987 at 10:18 A.M.

3. The pertinent portions of the Application were published in the Ravalli Republic, a newspaper of general circulation in the area of the source, on April 22 and 29, 1987.

4. The DNRC received timely objections to this application from Emil J. and Lenora Skroch, James W. and Lorraine M. Connelly, Lyle and Helen Barringer, Evelyn F. Lowman, Kenneth W. Roy, and Tim L. and Peggy McKay.

5. By this application, the applicant seeks to divert 1.0 cubic foot per second (cfs) up to 24.0 acre-feet per year (ac-ft/yr) from the Melnarik Catch Ditch between May 15 and September 15, inclusive of each year. (See Finding of Fact 8 below.) The water will be used for new flood irrigation between May 15 and September 15, inclusive of each year, on 10.0 acres in the $N\frac{1}{2}S\frac{1}{2}SE\frac{1}{4}SW\frac{1}{4}$ of Section 10, Township 3 North, Range 21 West, Ravalli County, Montana. (Applicant's Exhibit 1.) The Melnarik Catch Ditch collects (diverts) water in the $NW\frac{1}{4}NW\frac{1}{4}$ of Section 15, Township 3 North, Range 21 West, Ravalli County, Montana.

6. The source is waste water which collects in a ditch, known as the Melnarik Catch Ditch. The source is also referenced for the Water Rights Bureau data base as an unnamed tributary to Bunkhouse Creek. (Refer to Finding of Fact 9.)

7. Water would be conveyed from the Melnarik Catch Ditch onto the field of the applicant by an extension/enlargement of the catch ditch. The applicant plans to install an adequate water control structure(s) and a measuring device in the ditch. A series of spreader ditches would radiate from the end of the conveyance ditch. Water would spill from the spreader ditches and flow over the land to flood irrigate the field. (Testimony of the applicant and Notice and Statement of Opinion signed on December 5, 1987 by the applicant.)

8. During the hearing, the applicant requested that the period of use and period of appropriation for this application be shortened to May 15 to September 15, inclusive of each year. The application and public notice requested a period of use and period of appropriation from May 1 to September 15, inclusive of each year.

9. The waters in the Melnarik Catch Ditch are the result of surface runoff from irrigation in fields in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, Township 3 North, Range 21 West. The water for these fields comes from Tin Cup Creek via the Tin Cup Main Ditch (testimony of Peggy McKay and Kenneth Roy, and Applicant's Exhibit 1). The record does not give any indication that the initial appropriator of the Tin Cup Creek water makes any attempt to control the wastewater after it runs off of his/her property.

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Water spilling from the Melnarik Catch Ditch runs into the Mill Ditch via overland flow or by entering natural drainages which are tributaries to the Mill Ditch. There is a storage facility (Winsor Reservoir, located in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 10, Township 3 North, Range 21 West) which has the capability of capturing some of the waste water flowing down the natural drainages. Apparently the reservoir is no longer used as a storage facility for irrigation water. All of the water spilling from the Melnarik Catch Ditch reaches the Mill Ditch, except for natural seepage and evaporation. Water at the mouth of the Mill Ditch flows into Bunkhouse Creek (testimony of Kenneth Roy and James Connelly, and Objector's Exhibit 1).

10. The Bunkhouse Waste Ditch diverts the full flow of Bunkhouse Creek. (The Bunkhouse Waste Ditch is an extension of the channel of Bunkhouse Creek.) Water to fulfill the existing water rights of the water users from the Bunkhouse Waste Ditch has not been available throughout the entire irrigation season during any of the years that the objectors have irrigated from the ditch. (Uncontested testimony of Evelyn Lowman, Kenneth Roy, and James Connelly, and Objector's Exhibit 1.) If any excess water flows past the last diversion from the Bunkhouse waste ditch, it flows into the Bitterroot River (testimony of James Connelly).

11. Water is physically available at the Applicant's proposed point of diversion when the field in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, Township 3 North, Range 21 West is being irrigated. Such irrigation and resulting runoff normally occur for about three days every other week. (Testimony of Gary Evans and Peggy McKay.)

12. Objectors Emil and Lenora Skroch, James and Lorraine Connelly, and Kenneth Roy have claimed water rights from Bunkhouse Creek, diverted by the Bunkhouse Waste Ditch. There is no mention in their claims of a water source other than Bunkhouse Creek.

13. Objectors Lyle and Helen Barringer have a claimed water right from Southwick Creek. Southwick Creek is between and roughly parallel to Tin Cup Creek and Bunkhouse Creek, and it is not naturally a tributary to either creek.

14. Objectors Tim and Peggy McKay have made Statement of Claim 76H-W-150533 (see Applicant's Exhibit 12) for irrigation water from the Melnarik Catch Ditch. The water used under this claim is diverted upstream from where Mr. Evans proposes to divert water. This water right has not been used for the past few years. (Testimony of Peggy McKay.)

15. Statements of Claim 76H-W-019723 and 76H-W-019724 were made by Evelyn Lowman for water from Bunkhouse Creek. The documentation for both claims states that an unspecified component of the flow claimed consists of Tin Cup [Creek] water. The water is conveyed via the Bunkhouse Waste Ditch to Ms. Lowman's property for irrigation and fish and wildlife uses.

Both uses divert water from Bunkhouse Creek in the $SE\frac{1}{4}SE\frac{1}{4}SE\frac{1}{4}$ of Section 3, Township 3 North, Range 21 West. One cfs up to 730 ac-ft/yr is used for a fish and wildlife pond located in the $NW\frac{1}{4}SW\frac{1}{4}NW\frac{1}{4}$ of Section 2, Township 3 North, Range 21 West. (The volume claimed is not attainable at one cfs. It does reflect full time use of the claimed flow rate.) Eight acres of land in the $W\frac{1}{2}NW\frac{1}{4}$ of Section 2, Township 3 North, Range 21 West is irrigated with one cfs up to 24 ac-ft/yr.

16. All objectors, except Lyle and Helen Barringer, objected to this application because they contended there is no unappropriated water in the source during the irrigation season. Mr. and Mrs. Barringer alleged there could be a safety problem with the diversion, i.e. an inadequate diversion works.

17. There is no evidence in the record that the proposed appropriation would have any effect on any prior appropriator except for having to call for water in watershort periods.

18. The record does not reflect any planned uses or developments for which a permit has been issued or for which water has been reserved that would be interfered with. The Clark Fork River system presently is involved in a water reservation process, but there are no reservations on the Bitterroot River or the Clark Fork River below the Bitterroot River.

Based upon the foregoing Findings of Fact and upon the record in this matter, the Hearing Examiner makes the following:

PROPOSED CONCLUSIONS OF LAW

1. The Department gave proper notice of the hearing, and all relevant substantive and procedural requirements of law or rule have been fulfilled, therefore the matter was properly before the Hearing Examiner.

2. The Department has jurisdiction over the subject matter herein, and all the parties hereto.

3. The water flowing into the Melnarik Catch Ditch is water intially appropriated by an unidentified water user and imported into the drainage

basin where the catch ditch is located. The record gives no indication that the initial appropriator intends to exercise control of the water once it enters the catch ditch. (See Finding of Fact 9.) Once the original appropriator gives up control of the imported water, it becomes part of the drainage where it is released. That is, the released waste water is treated as if it were natural precipitation, concentrated in a small, distinct part of a drainage basin.

The hearing examiner concludes, for the purposes of this hearing, that the waste water which the applicant seeks to appropriate becomes part of the "natural" flow of the drainage and must go toward satisfying the most senior water right which is not being filled.

4. The Department must issue a Beneficial Water Use Permit if the Applicant proves by substantial credible evidence that the following criteria are met:

- (a) there are unappropriated waters in the source of supply:
 - (i) at times when the water can be put to the use proposed by the applicant,
 - (ii) in the amount the applicant seeks to appropriate; and
 - (iii) throughout the period during which the applicant seeks to appropriate the amount requested is available;
- (b) the water rights of a prior appropriator will not be adversely affected;
- (c) the proposed means of diversion, construction, and operation of the appropriation works are adequate;

(d) the proposed use of water is a beneficial use;

(e) the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved.

5. The proposed use of water for flood irrigation is a beneficial use of water. See MCA Section 85-2-102(2).

6. The proposed means of diversion, construction, and operation of the appropriation works are adequate. (See Finding of Fact 7.)

7. The proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved. (See Finding of Fact 18.)

8. Water is physically available at the proposed point of diversion as required by §85-2-311(1)(a). (See Finding of Fact 11.) However, the applicant failed to prove that there will ever be a year when he will not be called for water because of the assertion of an objector's water right. (See Finding of Fact 10.) Thus, it cannot be concluded that there is unappropriated water in the source of supply when the water can be put to the use proposed by the applicant or throughout the period when the applicant seeks to appropriate the water. See In the Matter of the Application for Beneficial Water Use Permit No. 060622-s76G by Wayne and Kathleen Hadley, Proposal for Decision, March 31, 1988.

9. Having to call for water is not an adverse effect per se. There is no other effect apparent from the record, therefore it is concluded that the

proposed use will not adversely affect the rights of a prior appropriator.

(See Finding of Fact 17.)

10. Lyle and Helen Barringer did not claim water rights from the source proposed for use by Mr. Evans. Their objection is not based on the lack of unappropriable waters in that source. Their concern is addressed by Conclusion of Law 6. (See Findings of Fact 13 and 16.)

PROPOSED ORDER

Application for Beneficial Water Use Permit No. 064600-s76H by Gary Dean Evans is hereby denied.

NOTICE

This proposal is a recommendation, not a final decision. All parties are urged to review carefully the terms of the proposed Order, including the legal land descriptions. Any party adversely affected by the Proposal for Decision may file exceptions thereto with the Hearing Examiner (1520 East 6th Avenue, Helena, MT 59620-2301); the exceptions must be filed within 20 days after the proposal is served upon the party. MCA §2-4-623.

Exceptions must specifically set forth the precise portions of the proposed decision to which exception is taken, the reason for the exception, and authorities upon which the exception relies. No final decision shall be made until after the expiration of the time period for filing exceptions, and the due consideration of any exceptions which have been timely filed.

Any adversely affected party has the right to present briefs and oral arguments pertaining to its exceptions before the Water Resources Administrator. A request for oral argument must be made in writing and be filed with the Hearing Examiner within 20 days after service of the proposal upon the party. MCA §2-4-621(1). Written requests for an oral argument must specifically set forth the party's exceptions to the proposed decision.

Oral arguments held pursuant to such a request normally will be scheduled for the locale where the contested case hearing in this matter was held.

However, the party asking for oral argument may request a different location at the time the exception is filed.

Parties who attend oral argument are not entitled to introduce evidence, give additional testimony, offer additional exhibits, or introduce new witnesses. Rather, the parties will be limited to discussion of the evidence which already is present in the record. Oral argument will be restricted to those issues which the parties have set forth in their written request for oral argument.

DONE this 28th day of April, 1988.

Jim Beck

JIM BECK, HEARING EXAMINER

Department of Natural Resources and Conservation
1520 East Sixth Avenue
Helena, MT 59620-2301
(406) 444-6695

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing PROPOSAL FOR DECISION was served by mail upon all parties of record at their address or addresses this 28th day of April, 1988, as follows:

GARY DEAN EVANS
PO BOX 295
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EMIL J AND LENORA SKROCH
BOX 236
DARBY MT 59829

JAMES W AND LORRAINE M CONNELLY
PO BOX 584
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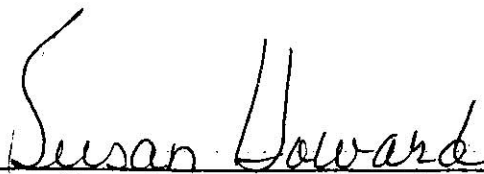
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Susan Howard, Hearings Reporter